

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

AL TYRONE JACKSON,

Defendant and Appellant.

B161653

(Los Angeles County
Super. Ct. No. BA227922)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Ruth Ann Kwan, Judge. Affirmed.

Christopher C. Hawthorne, under appointment by the Court of Appeal, for
Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney
General, Pamela C. Hamanaka, Senior Assistant Attorney General, Marc J. Nolan,
Supervising Deputy Attorney General, and Allison H. Chung, Deputy Attorney General,
for Plaintiff and Respondent.

INTRODUCTION

Appellant Al Tyrone Jackson challenges his conviction of petty theft with a prior on the grounds the trial court erroneously admitted an altered copy of a cash register receipt, informed the jury of appellant's prior conviction, and denied his request for a free transcript of his trial for use in preparing a motion for new trial. We conclude there is no basis for concluding the cash register receipt or its copy had been altered, and the testimony of prosecution witnesses adequately authenticated the receipt. Although the court erred by giving the jury an instruction with a printed reference to an admitted prior conviction, the error was harmless. Because appellant did not show a particularized need for transcripts of trial or pre-trial proceedings, the court did not err in denying his requests for free transcripts.

BACKGROUND AND PROCEDURAL HISTORY

Market employee Kerwin Scott saw appellant carry a hand basket containing several items into the store's restroom. Scott followed appellant into the restroom and, through a gap between the door and wall of the toilet stall, saw appellant stuff the items from the hand basket inside his trousers. Scott left the restroom and alerted the manager and another employee. When appellant emerged from the restroom, he was not carrying the hand basket and had nothing in his hands. He passed a staffed check stand, paused briefly, and left the store without paying for the items. Scott, the manager, and the other employee followed appellant out of the store, detained him, returned him to the store, and recovered the items from his trousers. At least some of the items had the store's label on them.

At trial, appellant admitted for purposes of Penal Code section 666 that he had a prior burglary conviction. In bifurcated proceedings, a jury convicted him of petty theft. Appellant admitted one prior serious or violent felony conviction for purposes of the Three Strikes Law, and the People dismissed an allegation of a second prior serious or violent felony conviction. The court sentenced appellant to a second strike term of four years in prison.

DISCUSSION

1. Admitting People's Exhibit 3 was not erroneous.

Scott testified that after he recovered the items from appellant's trousers, the items were "run through a cash register." He learned that a receipt was thereby generated. The prosecutor marked as People's Exhibit 3 a cash register receipt or a copy of the receipt and provided it to Scott to refresh his memory as to the items recovered from appellant. Scott testified the items listed on the receipt were recovered from appellant. Exhibit 3 was an actual receipt or a photocopy of a receipt from the market, and the name of the market was printed on Exhibit 3. Scott had seen the original receipt the day of the theft, although the receipt was not found "on" appellant. When the prosecutor asked Scott whether the receipt was generated after the items were recovered from appellant, the court sustained appellant's objection that the foundation was inadequate. Scott then testified he saw the receipt within 10 to 15 minutes after he recovered the items from appellant. He further testified that the only difference between People's Exhibit 3 and a receipt generated through the "regular scanning of grocery items" was that Exhibit 3 was a slightly enlarged photocopy.

Outside the presence of the jury, the trial court warned the prosecutor he had not established a sufficient foundation for admission of the receipt, because Scott had not demonstrated personal knowledge regarding the generation of the receipt.

Store manager Ed Oliver testified that after appellant was detained, the items recovered from him were "run through" a check stand, which generated a receipt. Oliver did not personally do this, but he directed one of his employees to do it. Oliver took the receipt from either the employee or the cash register and gave it to the officers who responded to the scene or to one of his employees to give to the officers. He testified that People's Exhibit 3 was a register receipt from his store, and it was a "normal receipt," which was no different than a register receipt generated by a shopper purchasing items. The receipt showed the date, but there was no way to discern the time it was generated.

Officer Luis Alfaro testified the store personnel provided officers with a receipt or

a photocopy of a receipt. He identified People's Exhibit 3 as the receipt or photocopy he received from store personnel.

Appellant contends People's Exhibit 3 was an "altered copy" of a register receipt because it did not show the identity of the checker who ran it or the time it was made. Appellant therefore argues Oliver's testimony regarding the original receipt was insufficient to authenticate the copy, and the trial court erred by admitting People's Exhibit 3.

Appellant's contention that Exhibit 3 was altered is purely speculative. No evidence was offered that the original receipt included either a time or any information identifying the employee who generated it. Indeed, Scott and Oliver testified that Exhibit 3 did not differ from any other receipt generated in their store. From their testimony, a reasonable inference may be drawn that neither the original receipt nor any other receipt generated by the market at that time reflected a time stamp or any information identifying the responsible employee. Accordingly, the lynchpin of appellant's argument has no merit.

The combined testimony of Oliver and Scott adequately authenticated People's Exhibit 3. Oliver testified one of his employees scanned the items recovered from appellant, the scanning process generated a receipt, Oliver took that receipt from the employee or the cash register, and gave it either to a responding officer or one of his employees. Scott testified Exhibit 3 was a photocopy of the register receipt he viewed about 10 to 15 minutes after he recovered the items from appellant, and the items listed on Exhibit 3 matched the group of items he recovered from appellant. The name of the store was printed on the receipt. Considered together, this testimony established that Exhibit 3 was what the prosecution claimed it was: the store's receipt created by scanning the items recovered from appellant's trousers.

Moreover, even if error were found, it would necessarily be harmless under any standard. The receipt had no tendency to prove or disprove any element of the offense. It was simply a record of the particular items recovered from appellant. It supplemented

Scott's testimony that he saw appellant conceal the items and leave the store without paying for them. No evidence supports appellant's theory on appeal that the receipt was generated when he purchased the items. Appellant did not rely upon that theory at trial.

2. Giving the jury an instruction with a printed reference to an admitted prior conviction was harmless error.

Appellant was charged with petty theft with a prior qualifying conviction. (Pen. Code, § 666.) Before trial, appellant admitted his prior conviction of burglary. Accordingly, neither the trial court nor the prosecutor referred to the prior conviction at any time during the trial. However, the court gave the jury printed instructions bearing a title of "CALJIC 14.41 [¶] PETTY THEFT WITH PRIOR CONVICTION—PRIOR ADMITTED."

Appellant contends the introduction violated his confrontation and due process rights. Respondent implicitly agrees the court erred, but contends the error was harmless.

Where a defendant charged with a petty theft with a prior conviction admits the prior conviction, the existence of the prior conviction must not be revealed to the jury except as impeachment in the event the defendant testifies. (*People v. Bouzas* (1991) 53 Cal.3d 467, 480.) If the trial court erroneously informs the jury of the prior conviction or permits the prosecutor to inform the jury, the error is reviewed under *People v. Watson* (1956) 46 Cal.2d 818, 836. (*People v. Bouzas, supra*, 53 Cal.3d at p. 481.)

The trial court inadvertently erred by failing to cover or obliterate the title on the printed copy of CALJIC No. 14.41. Under the circumstances, however, it is not reasonably probable that appellant would have obtained a more favorable result had the jury not received the instruction with the reference to an admitted prior conviction in its title. The title of the instruction revealed only that appellant admitted having a prior conviction. The nature of the conviction was not suggested by the instruction's title. While knowledge of any prior conviction almost certainly has some prejudicial effect, this case was not a close one. Scott's testimony provided strong proof of the theft charge against appellant. Scott testified when he, Oliver and the third employee confronted

appellant with the theft, appellant stated, “Oh, man,” and handed over a container of Armor All. Oliver’s testimony confirmed elements of Scott’s testimony, including appellant’s apprehension and detention. Neither appellant nor any other witness testified for the defense. As a result, the evidence of appellant’s guilt was uncontradicted and overwhelming. There is no reasonable probability the jury would have acquitted him had the title of the printed instruction not referred to an admitted prior conviction.

3. Denying appellant’s request for a free trial transcript for use in preparing a motion or petition was not erroneous.

After the jury returned its verdict, the trial court granted appellant’s motion to proceed in propria persona. On the date set for appellant’s motion for trial and sentencing three weeks later, appellant requested a transcript of trial “to prepare ineffective petition.” When the court asked about the kind of petition he wanted to prepare, appellant responded “based on ineffective assistance of counsel.” The court denied the request, stating that appellant should be able to write his “motion without a transcript.” Appellant was granted a 22-day continuance to prepare his motion for new trial.

On the continued hearing date, appellant asked the trial court for transcripts of unspecified pretrial proceedings and the *Marsden*¹ hearing. When the court asked appellant his reasons for needing the transcripts, he replied, “In order to be able to go back to certain questions that—that I had questions concerning evidence and testimony concerning the evidence and the prosecution’s exhibits and their markings of evidence.” The court explained it was still unclear why appellant needed the transcripts, and therefore denied the motion. At the same hearing, appellant filed his motion for new trial, which the court described as based upon grounds of ineffective assistance of counsel and prosecutorial misconduct.² The court found neither ground had merit.

¹ *People v. Marsden* (1970) 2 Cal.3d 118.

² Although the trial court’s comments clearly indicate the motion for new trial was made in writing, no copy of it appears in the clerk’s transcript. Fortunately, the court

The trial court granted appellant continuances of more than five weeks to produce new evidence he claimed would establish that someone had tampered with People's Exhibit 3. On the continued date, after hearing testimony from appellant's witnesses, appellant's motion for new trial was denied.

Appellant contends the trial court erred by denying his requests for transcripts of his trial for use in preparing a motion for new trial. He contends the error requires reversal without showing prejudice.

An indigent criminal defendant must be provided a free transcript of prior proceedings where the transcript is necessary for an effective defense or appeal. (*People v. Hosner* (1975) 15 Cal.3d 60, 64.) However, "an indigent defendant is not entitled, as a matter of absolute right, to a full reporter's transcript of his trial proceedings for his lawyer's use in connection with a motion for a new trial; but, since a motion for a new trial is an integral part of the trial itself, a full reporter's transcript must be furnished to all defendants, rich or poor, whenever necessary for effective representation by counsel at that important stage of the proceeding." (*People v. Lopez* (1969) 1 Cal.App.3d 78, 83.) Whether the denial of transcripts for a motion for new trial is so arbitrary as to violate due process must be determined on a case by case basis. (*Ibid.*) Two factors relevant to the determination of the need for transcripts are the value of the transcript to the defendant in connection with the proceeding for which it is sought, and the availability of alternatives that would fulfill the same functions as a transcript. (*People v. Hosner, supra* 15 Cal.3d at p. 65.) The trial court therefore may deny a motion for free transcripts for use in preparing a motion for new trial where the defendant fails to show a particularized need for the transcripts. (*People v. Bizieff* (1991) 226 Cal.App.3d 1689, 1702.)

Appellant never showed the trial court he had a particularized need for his trial transcripts to prepare his motion for new trial or for any other purpose. Indeed, he never

made a thorough record regarding the motion, setting forth the grounds and particular

even told the court he needed any of the requested transcripts to prepare his motion for new trial. In his first request, he stated he wanted the transcripts to prepare a “petition” “based on ineffective assistance of counsel.” In the subsequent motion for new trial, appellant claimed counsel was ineffective because he did not have appellant testify, did not impeach prosecution witnesses, failed to call certain witnesses or investigate the “possibility of other potential witnesses,” and failed to object to inadmissible evidence. With the exception of the failure to object to inadmissible evidence, appellant’s grounds pertain to matters outside the record. Transcripts of the trial therefore would not have assisted appellant in presenting any of these claims. With respect to the failure to object, appellant failed to specify the inadmissible evidence he had in mind. If he did not know, but simply suspected counsel may have failed to make valid objections to particular evidence, he could and should have told the trial court that he needed the trial transcripts so he could read them and determine whether counsel failed to object appropriately. He did not do so. The bulk of appellant’s arguments in post-trial proceedings pertained to People’s Exhibit 3 and appellant’s contention that someone had tampered with it. During trial, counsel repeatedly objected to this exhibit on foundational grounds and opposed its admission. Most of the asserted bases for counsel’s ineffectiveness were outside of the trial record and could only be asserted by means of a petition for writ of habeas corpus. Because a petition could be filed after the preparation of the trial transcripts for appeal, appellant showed no particularized need for the preparation of trial transcripts at the time of his first request. Furthermore, following the preparation of the reporter’s transcripts for appeal, appellant made no claim of ineffective assistance of counsel and filed no petition for writ of habeas corpus.

Appellant also failed, at the time of his second request, to state that he needed the requested transcripts for preparation of his new trial motion or any other particular purpose. He requested unspecified pretrial hearings and the *Marsden* hearing and

instances of purportedly ineffective assistance alleged in appellant’s motion.

explained he “had questions,” but did not show a particularized need for them. Moreover, his reference to “questions concerning evidence and testimony concerning the evidence and the prosecution’s exhibits and their markings of evidence” did not explain his need for transcripts of pretrial hearings or the *Marsden* hearing, which did not pertain to the prosecution’s exhibits or other evidence. The only pretrial proceedings were the *Marsden* hearing, two evidentiary hearings to provide the defense with discovery regarding the market’s videotaping system, bifurcation of the prior conviction allegations, and appellant’s stipulation to the prior conviction for purposes of Penal Code section 666.³ Appellant’s explanation therefore was no explanation at all, and fell far short of a showing of particularized need for the transcripts mentioned.

The trial court therefore did not err by denying appellant’s requests for transcripts.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

BOLAND, J.

We concur:

COOPER, P.J.

RUBIN, J.

³ With respect to the market’s videotape, two market managers testified that they did not review or save a videotape of the shoplifting incident involving appellant, if it was indeed caught on the store’s video cameras.